(2011) 05 DEL CK 0118

In the Delhi High Court

Case No : Regular Second Appeal No. 268 of 2007

Hari Singh (Deceased) Through His LRS. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Delhi Land Reforms Act, 1954 — Section 1(2), 1(4), 185, 2(C), 3
Delhi Panchayat Raj Act, 1954 — Section 99
Limitation Act, 1963 — Article 58, 59

Citation : (2011) 05 DEL CK 0118

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Rohit Kumar, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 23.7.2007 which had endorsed the finding of the trial judge dated 01.10.2004 whereby the suit filed by the Plaintiff Hari Singh (seeking a declaration to the effect that he be declared as an owner of the agricultural land comprised in khasra No. 304, measuring 6 bighas 2 biswas situated in village Bhalaswa, Jahangirpur, Delhi with the further prayer that the notification dated 11.7.1986 be declared null, void and not binding upon the Plaintiff; prayer of permanent injunction had also been sought restraining the Defendants from interfering in the suit property) had been dismissed.

2. Plaintiff claimed himself to the cultivator of agricultural land as aforenoted i.e. the land measuring 6 bighas 2 biswas in Khasra No. 304 in the revenue estate of village Bhalswa, Jahangirpur, P.O. Samaypur, Delhi. He was in possession and harvesting the land since 1952 without any interference from any quarter. The Halka Patwari in 1960 wrongly showed this land as vacant land; thereafter it was shown in the name of one Jumma who had no right or title in the land. This was

in connivance with the Defendants. Plaintiff had filed a petition for correction of the entries in the khasra girdawari before the Revenue Assistant which application was rejected. Appeal was filed; order of the Revenue Assistant was set aside. On 11.7.1986 a notification had been issued by the Defendants wherein the suit land came to be declared as public land for a public purpose; this was wrongfully shown in the gazette notification; this notification is invalid and not binding upon the Plaintiff. Further case of the Plaintiff that his name has not been shown in khasra girdawari since 1981-82 and thereafter up to 1992; it was last shown in the record for the year 1979-80; Plaintiff is a harvester and growing his crops in the suit land since 1952. Suit land since 1986 had been declared public land and for public purpose; notification dated 11.7.1986 is also not binding upon him. Accordingly prayer has been made as aforenoted.

3. Written statement has contested the suit. It was denied that the Plaintiff has been in possession of the suit land or there is any collusion with the Defendants. The forest department vide notification dated 11.7.1986 had since acquired the land. It cannot be the subject matter of the challenge; jurisdiction of this Court is barred; suit is liable to be dismissed.

4. Trial judge had framed the following nine issues:

i. Whether the Plaintiff is entitled to the relief of declaration as prayed for?

ii. Whether the Plaintiff has become owner of the land by way of adverse possession? OPP

iii. Whether the notification dated 11.7.86 bearing No. F 11(16)-SK/revenue/86 is illegal, void etc.? OPP

iv. Whether the Plaintiff is entitled to the decree of permanent injunction regarding restraining of Defendant from interfering in possession of the suit land comprised in Khasra No. 304 measuring 2 bighas and 6 biswas? OPP

v. Whether the suit of the Plaintiff is not maintainable of nonjoinder/mis-joinder? OPD

vi. Whether the suit is hit by Section 80 CPC? OPD

vii. Whether the suit is hit by Section 99 of Delhi Panchayat Raj Act ?

viii. Whether the suit is hit by Limitation Act?

ix. Whether the suit is not maintainable in view of the objections taken by the Defendant in their WS?

x. Relief.

5. Issues No. 5 to 9 were treated as preliminary issues. The trial judge was of the view that the Plaintiff is claiming himself to the bhumidari of the suit land. Such a declaration can only be granted by a Revenue Court. Provision of Section 185 of the DLRA the jurisdiction of the Civil Court is barred qua relief of

declaration that the notification dated 11.7.1986 be declared null and void. Court was of the opinion that the same cannot be challenged in a Civil Court; land has been declared as public land; u/s 1(2)(4) of the DLRA, the declaration of a Chief Commissioner under Sub-Section 2(C) shall be conclusive evidence that the land is held and occupied for a public purpose. Court was of the view that the notification cannot be subject matter of challenge; suit was accordingly dismissed. This was affirmed in first appeal. The impugned judgment inter alia recorded its finding as under:

10. In the present case also, the Appellant is trying to claim possession of an agricultural land by way of adverse possession which cannot be protected by civil Courts unless and until declaration about the rights of the Appellant as Bhommidar are recognized by revenue authorities for which Appellant could have approached the revenue authorities to do the needful. In fact, the Appellant has already approached the revenue authorities for the requisite relief and are waiting for the outcome. 11. Now coming to the relief of declaration that notification issued by the Government under the provisions of Land Acquisition be set aside. It is well settled that such notification declared by the then commissioner under Clause (e) of Sub-section (2) are presumed conclusive. Moreover, having gone through the record there is nothing which may point out that there was any infirmity in the process adopted by the Respondents in acquiring the land and thereafter declaring it as public land for public purposes which might have enable the civil Court to cause any interference that also after period of 6 years. Even according to the provisions of Limitation Act such a suit should have been filed within 3 years from the date of cause of action which certainly arose on 11.7.86 as per Article 59 thereof which has not been done. Thus, I do not find any error in the judgment of the trial.

6. This is a second appeal. It has been admitted and on 04.3.2008 the following substantial questions of law were formulated:

1. Whether the notification dated 1.7.1986 could be challenged by way of a civil suit?

2. Whether the suit as framed was maintainable before the Civil Court?

7. On behalf of the Appellant, it has been urged that the jurisdiction of the Civil Court qua the second relief i.e. the relief of declaration of the status of the Plaintiff as bhuimdar may not be the subject matter of decision by a Civil Court but the second prayer i.e. the prayer seeking a declaration to the effect that the notification dated 11.7.1986 be declared null and void can only be gone into by the Civil Court; the Revenue Court would in fact have no jurisdiction to decide this question. A party cannot be left remediless. Learned Counsel for the Appellant has placed reliance upon Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, . as also another judgment reported in 44 (991) DLT 713 (DB) Sher Singh and Ors. v. Goan Sabha and Ors. None has appeared for the Respondent.

8. There is no infirmity in the finding of the two Courts below. What the Plaintiff had sought was a declaration to the effect that he be declared bhumidar of the agricultural land. The bar of Section 185 of the DLRA was operational. Such a suit as framed could not have been agitated before the Civil Court; the bhumidari rights can be decided only by the Revenue Court. Finding on this score suffers from no infirmity. Substantial question of law No. 2 is answered against the Appellant and in favour of the Respondent.

9. The notification dated 11.7.1986, as is evident from the date of the notification, is of the year 1986. Present suit challenging the notification had been filed in the year 1992. This was admittedly after the prescribed period of limitation which prescribes a period of three years for a relief of declaration. This is evident from Article 58 of Limitation Act. It is also not the case of the Plaintiff that knowledge of this notification came to him at any stage later than the date of notification.

10. That apart the effect of declaring the notification to be valid or invalid was essentially entwined with the declaration of the status of the Plaintiff as a bhumidar. One cannot be segregated from the other. The Plaintiff can be declared as a bhumidar only if the notification dated 11.7.1986 is declared invalid; vice-versa if the notification dated 11.7.1986 is declared as valid, the necessary corollary would be that the Plaintiff would lose his status of a bhumidar. As already aforenoted bhumidari rights can only be dealt with by the Revenue Court; the bar of Section 185 of the DLRA prohibits the Civil Court to go into this issue.

11. The judgments relied upon by the learned Counsel for the Appellant are inapplicable. In the case of Dhulabhai (supra) the refund of tax illegally collected was under challenge; the jurisdiction of the Civil Court was discussed in that context. In the judgment of Sher Singh (supra) the word ''holding'' as appearing in Section 3 of the DLRA had been expounded. In this case the challenge was about the wasting of land u/s 7; what is waste land and the explanation to Section 7 of the Act had been dealt with. This judgment does not in any manner advance the case of the Appellant.

12. Substantial question No. 2 is also answered against the Appellant and in favour of the Respondent. There is no merit in the appeal. Dismissed.

